Supreme Court, U.S.
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No. 03-555

In The

Supreme Court of the United States

ARTHUR MYERS,

Petitioner,

v.

CITY OF NORTH MIAMI AND INTEGRATED ADMINISTRATORS INSURANCE COMPANY,

Respondents.

On Petition For Writ Of Certiorari To The District Court Of Appeal Of Florida, First District

RESPONDENTS' RESPONSE FOR PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Question One: Whether the Florida court of appeals correctly concluded that the state workers compensation statute allowing termination of supplemental benefits pursuant to 440.15(1)e(1) Florida Statutes (1991), and section 440.15(1)(f)1 Florida Statutes (1995) was not a "reverse offset", and therefore neither in conflict with, nor preempted by 42 U.S.C. 424 which governs entitlement to social security benefits?

Question Two: Whether the Florida court of appeals correctly decided that the above-mentioned state statutes which terminate supplemental benefits to certain injured workers were not violative of the equal protection clause of the United States Constitution, because the Florida legislature had a legitimate state interest to reduce workers compensation premium costs to business.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Integrated Administrators, is a subsidiary of Blue Cross Blue Shield of Florida.

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The opinion of Judge of Compensation Claims Kathryn S. Pecko, dated January 16, 2002, in the case of *Myers v. City of North Miami*, OJCC Nos. 91-000397MIA, 92-001239MIA is unpublished. Her decision was appealed to the Florida First District Court of Appeal, and consolidated with *Harrell v. Florida Construction, et al.*, 834 So.2d 352 (Fla. 1st DCA 2003). The Florida Supreme Court declined to accept jurisdiction of the case July 16, 2003, and it is reported at *Harrell et. al. v. Florida Construction Specialist,* 851 So.2d 728 (Fla. 1st DCA 2003)

JURISDICTION

The jurisdiction of this court is invoked pursuant to 28 U.S.C. Sec. 1257(a).

STATEMENT

The opinion of the Florida First District Court of Appeal is the best statement of the facts, and are fairly restated by the petitioner in his brief. Respondent naturally adopts, and incorporates that opinion for purposes of this response.

ARGUMENT

No judicial interpretation of federal, and state statutes correlating the receipt of social security benefits, and workers compensation benefits has accepted the petitioner's claim that it is illegal for state legislatures to

amend their workers compensation laws after the passage of the Omnibus Reconciliation Act of 1981, due to violation of the Supremacy Clause of the United States Constitution, and the preemption of federal social security law. In 1990 the state of Florida was faced with a crisis in workers compensation due to high premium costs for employers. The legislature was charged, by the then Governor Lawton Chiles with reducing premium costs for businesses by amending the benefit structure to injured workers. Towards this end, the sweeping changes in the workers compensation statute included the limitation on payment of supplemental benefits authorized as cost of living increases for injured workers receiving permanent total disability workers compensation benefits, and eligible for social security. The legislature of Florida was justified, due to the insurance crisis in the state, in creating this cost saving measure for business, and amending the state statute did not violate the Supremacy Clause, or Equal Protection Clause of the United States Constitution.

There is no supremacy clause violation in 440.15(1)e(1) Florida Statute 1991 because there is no express intent by Congress in 42 U.S.C. Sec. 424a(d) to usurp state authority over supplemental benefits. 440.15(1)e(1) Florida Statute does not create an offset, reverse or otherwise, which could be interpreted as constitutionally repugnant. Petitioner's reliance on *Rose v. Arkansas State Police*, 479 U.S. 1, 93 L. Ed. 2d 183, 107 S. Ct. 334 (1986) is misplaced. In that case there was no issue of congressional intent as legislative histories clearly illustrated Congress' intent to protect widows of police killed in the line of duty. In the instant case no similar intent is expressed in the Omnibus Budget Reconciliation Act of 1981 to assist this court in concluding Congress'

amendment to 42 U.S.C. Sec. 424a would tolerate no state action in the coordination of social security and workers compensation benefits. Thus far no legislative history or other evidence has been presented to support the position of the petitioner that any state action correlating workers compensation benefits with social security is illegal. After lengthy preemption analysis, petitioner's argument, relying on the violation of the Supremacy Clause was correctly rejected by the Florida First District Court of Appeal.

Petitioner's equal protection argument, that state laws which terminate workers compensation benefits upon receipt of social security benefits is wrong, has been raised in many states, and been largely rejected. They have been upheld in most states as constitutional. Although some state supreme courts have decided this issue differently from the decision below, it appears the better view, and probably most prominent, concludes no constitutional challenge exists. As stated by the Supreme Court of Massachusetts in *Tobin's Case,* 424 Mass. 250, 253, 675 N.E.2d 781 (1997):

> For these reasons, there is universal agreement that statutes like *G. L. c. 152, § 35E,* promote legitimate governmental goals and do not violate rights of equal protection. See *Richardson v. Belcher, 404 U.S. 78, 82-84, 30 L. Ed. 2d 231, 92 S. Ct. 254 (1971); Rosa v. Warner Elec. Contr., 849 P.2d 845, 848 (Colo. Ct. App. 1992),* aff'd, *870 P.2d 1210* (Colo.), cert. denied, *513 U.S. 814, 130 L. Ed. 2d 25, 115 S. Ct. 69 (1994); Acosta v. Kraco, Inc., 471 So. 2d 24, 25* (Fla.), cert. denied, *474 U.S. 1022, 88 L. Ed. 2d 559, 106 S. Ct. 576 (1985); Brown v. Goodyear Tire & Rubber Co., 3 Kan. App. 2d 648, 653, 599 P.2d 1031 (1979),*

> aff'd, *227 Kan. 645, 608 P.2d 1356,* appeal dismissed, *449 U.S. 914, 66 L. Ed. 2d 142, 101 S. Ct. 310 (1980); Berry v. H.R. Beal & Sons, 649 A.2d 1101, 1103 (Me. 1994); Peck v. General Motors Corp., 164 Mich. App. 580, 599, 417 N.W.2d 547 (1987),* vacated on other grounds sub nom. *Pankow v. General Motors Corp., 432 Mich. 892 (1989); McClanathan v. Smith, 186 Mont. 56, 66, 606 P.2d 507 (1980); Harris v. Department of Labor & Indus., 120 Wash. 2d 461, 478-481, 843 P.2d 1056 (1993).*

Add to this chorus recently decided *McDowell v. Jackson Energy RECC*, 84 S.W.3d 71 (S. Ct. Kentucky 2002), *Injured Workers of Kansas v. Franklin*, 942 P.2d 591 (S. Ct. Kansas 1997), *Vogel v. Wells Fargo*, 937 S.W.2d 856 (S. Ct. Tenn. 1996), *Culver v. Ace Electric*, 971 P.2d 641 (S. Ct. Colo. 1999), and it becomes clear the equal protection argument has been constantly rejected.

The state statute enacted by the Legislature in 1990 is not violative of the equal protection clause of the United States Constitution because there is a rational basis for cessation of the supplemental benefit, particularly in light of the workers compensation crisis, which existed in this state at the time of its enactment. The legislative preamble of the workers compensation law as amended in 1990 consistently refers to cost savings as a basis for amending the statewide compensation benefits scheme. Clearly equal protection is not violated when the legislature predicates its statutory changes to the delivery mechanisms of workers compensation benefits upon cost savings, and the need to encourage business development in the state at a time when workers compensation coverage would have been cost prohibitive without legislative action. Case law is clear that in cases involving the area of economics and

social welfare, state classifications must bear some rational basis to the legislative goal to be achieved in order to be consistent with equal protection principles. That is to say there must be a rational basis for classifications created by the legislature to achieve objective goals for the state. *Sasso v. RAM Property Management*, 317 So.2d 204 (Fla. 1st DCA 1983).

Industry looks to the courts to interpret the laws so as to maintain the stable business climate, and not to disturb the existing precedent which has been relied upon for more than 10 years. This industry in Florida cannot take another shock wave overturning established laws already rightly decided by the courts. The first district court of appeals has considered this statute on several occasions. In *Wilkins v. Broward County School Board,* 754 So.2d 50 (Fla. 1st DCA 2000) the court noted three cases in 1999 alone considered this statute. See *Orlando Regional Health-Care System v. Owens,* 731 So.2d 1278 (Fla.1st DCA 1999); *Dixon v. Pasadena Yacht and Country Club*, 731 So.2d 141 (Fla. 1st DCA 1999); *Scott v. Mohawk Canoe*, 730 So.2d 731 (Fla. 1st DCA 1999); *Burger King Corp. v. Moreno,* 689 So.2d 288 (Fla. 1st DCA 1997). While there is disagreement as to whether or not the specific constitutional arguments raised by Petitioner were raised in the above-mentioned cases, it is submitted the statute has been adequately reviewed, and its constitutionality rightly decided by the Florida First District Court of Appeal.

The constitutionality of this state statute is not legitimately in issue, and the interpretation of the law requires adherence to *stare decisis*. Jurisdiction does not

lie upon the arguments presented, and this court's discretion should not be exercised.

CONCLUSION

This court should decline to exercise its discretionary jurisdiction because the district court of appeal properly concluded the state statute constitutional.

Respectfully submitted,

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